HB 312

Department of Legislative Services
2010 Session

FISCAL AND POLICY NOTE

House Bill 312 (Delegate Krebs, *et al.*)
Ways and Means

Maryland Death Taxes - Family Property Protection Act

This bill states that the Maryland estate tax is not imposed on the transfer of the estate of a decedent if at the time of the decedent's death the federal estate tax is not in effect. The bill also repeals provisions relating to the Maryland estate tax that were enacted by Chapter 430 of 2004 (the Budget Reconciliation and Financing Act (BRFA) of 2004) by recoupling Maryland estate tax law to the gradual increases in the unified credit allowed against the federal estate tax; and repealing the provision relating to the deduction for State death taxes allowed under the federal estate tax. The bill also provides that under specified circumstances the federal credit used to determine the Maryland taxable estate may not exceed 16% of the amount by which a decedent's taxable estate exceeds the applicable exclusion amount as defined by the Internal Revenue Code.

The bill takes effect July 1, 2010, and applies to decedents dying after December 31, 2009.

Fiscal Summary

State Effect: General fund revenues decrease by $80.2 million in FY 2011 and by $36.9 million in FY 2012. Expenditures are not affected. The U.S. Congress is currently considering legislation that, if enacted, will substantially alter the fiscal impact of this bill.

($ in millions)	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
GF Revenue	($80.2)	($36.9)	$0	$0	$0
Expenditure	0	0	0	0	0
Net Effect	($80.2)	($36.9)	$.0	$.0	$.0

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Current Law: The Maryland estate tax is decoupled from the federal estate tax as discussed below.

Background: The federal Economic Growth and Tax Relief Reconciliation Act (EGTRRA) of 2001 provided for the reduction and ultimate repeal of the credit allowed under the federal estate tax for state estate taxes paid (federal credit). Maryland, like most states, had an estate tax that was linked directly to the federal credit. Without statutory changes by the General Assembly, the repeal of the federal credit under the 2001 federal tax Act would have automatically repealed the State estate tax because of the link between the State tax and federal credit. EGTRRA phased out the federal estate tax beginning in 2001, primarily by increases the amount of an estate that is exempt from taxation and by reducing the top marginal tax rate. In 2010, the federal estate tax is temporarily repealed. Beginning in 2011, EGTRRA terminates and the estate tax is reinstated in a similar manner as had been in effect before EGTRRA.

As part of the 2002 BRFA, the Maryland estate tax was partially decoupled from the federal estate tax, thereby continuing the State estate tax notwithstanding the phase out and repeal of the federal credit. The State estate tax is now calculated as if the federal tax Act had not phased out the federal credit; however, it is calculated using other provisions of federal estate tax law in effect on the date of the decedent's death.

Unified Credit

The Maryland estate tax is calculated as the lesser of the federal estate tax after deducting the unified credit or the federal credit, reduced by any inheritance tax paid. The unified credit used to calculate the State estate tax, which effectively sets the threshold for taxability of an estate, is the unified credit in effect as of the decedent's death as set forth in federal law. Under the federal Act, the amount effectively exempted under the unified credit was increased from $700,000 to $1.0 million in 2002, and then phased up over a period of years to $3.5 million in 2009.

The 2002 BRFA did not, however, decouple the Maryland estate tax from the gradual increases in the unified credit allowed against the federal estate tax. As the unified credit increases, the amount of the Maryland estate tax would have declined.

The 2004 BRFA had the effect of freezing the amount of the unified credit at $345,800 so as to exclude $1.0 million from the federal estate tax for purposes of the Maryland estate tax calculation. The 2004 BRFA affected the estate tax returns filed for decedents dying after December 31, 2003.

Chapter 225 of 2006 limited the amount of the federal credit used to calculate the Maryland estate tax to 16% of the amount by which the decedent's taxable estate exceeds $1.0 million.

Deduction for State Death Taxes

By remaining coupled to the federal estate tax base, the decoupled Maryland estate tax incorporated a provision of federal law effective beginning in 2005 that would have allowed a deduction for State death taxes paid, in lieu of the previously allowed credit for State death taxes paid. Allowing the deduction of State death taxes for purposes of determining the State death tax base would have resulted in a circular calculation, because the tax being calculated results in a deduction from the tax base, which then alters the calculation of the tax owed.

The 2004 BRFA required that the Maryland estate tax be determined without regard to the deduction for State death taxes allowed for purposes of the federal estate tax. The 2004 BRFA effectively created an addition modification to the federal taxable estate for Maryland estate tax purposes in the amount deducted for State death taxes paid. A similar addition modification to the federal tax base is required under the Maryland income tax for State and local income taxes for which a deduction is allowed for federal income tax purposes. This provision simplifies the calculation of the Maryland estate tax while preventing additional loss of revenue from the Maryland estate tax.

State Fiscal Effect: This bill states that the Maryland estate tax is not imposed on the transfer of the estate of a decedent if at the time of the decedent's death the federal estate tax is not in effect. Under current federal law, the estate tax is temporarily repealed in 2010. As a result, general fund revenues decrease by $80.2 million in fiscal 2011 and $36.9 million in fiscal 2012.

The bill also repeals provisions of the Maryland estate tax that were enacted by the 2004 BRFA; the estimate reflects the expiration of EGTRRA as provided under current federal law. Therefore, the bill will not have a fiscal impact for decedents dying after December 31, 2010.

Congress has deliberated legislation providing for the extension, in some form, of the estate tax provisions of EGTRRA. The federal estate tax may be reinstituted retroactively. Most analysts think Congress will extend the estate tax reductions enacted by EGTRRA. To the extent the tax reductions enacted by EGTRRA are extended by federal law, revenue losses will be larger than estimated in fiscal 2012 and will occur in fiscal 2013 and beyond.

Small Business Impact: A limited number of small businesses subject to the estate tax will benefit from reduced estate taxes. As with the general public, most owners of family farms and small businesses are unlikely to owe estate taxes. The Congressional Budget Office estimated that nationwide about 2.1% of farmers and 2.4% of small-business owners who died in 2005 had federal estate tax returns filed.

Additional Information

Prior Introductions: Similar bills were introduced in the 2008 and 2009 sessions. SB 675/HB 157 of 2009 and SB 386 of 2008 were not reported from the Senate Budget and Taxation Committee and the House Ways and Means Committee, respectively.

Cross File: None.

Information Source(s): Comptroller's Office, Congressional Budget Office, Department of Legislative Services

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